

service to the provider of the service.<sup>67</sup> In light of the true facts, AICC cannot even bring itself within the rule it seeks to advance.

AICC nonetheless broadly asserts that Congress intended to preclude BOCs from “participating in the success of one alarm monitoring company. . . over another.”<sup>68</sup> Yet, this claim is no better than AICC’s earlier assertion that Congress sought to prohibit BOC participation in the alarm monitoring “business,” an assertion it twice earlier made but has apparently since abandoned.<sup>69</sup> Nowhere in the statute is there any reference, whether express or implied, to the intention AICC would have the Commission ascribe to Congress. To the contrary, Congress’ intention is made sufficiently clear by reference to the words it actually used, and the Commission should reject AICC’s invitation to add to them.

Section 275 was never meant to foreclose any and all BOC involvement in the alarm monitoring industry,<sup>70</sup> nor was it meant to protect providers of that service from increased competition from each other (particularly inasmuch as the public would benefit by such competition). Section 275 was only meant to prohibit BOCs from engaging in the provision of alarm monitoring service. AICC cannot claim that Commission approval of SWBT’s CEI Plan would

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<sup>67</sup> SBC, Attachment A, at 10; Attachment B, at 1-2.

<sup>68</sup> AICC, at 16-17.

<sup>69</sup> SWBT’s CEI Plan, Comments of AICC, at 4, Motion of AICC to Hold in Abeyance, filed August 2, 1996, at 1.

<sup>70</sup> Indeed, SWBT, like U S West, provides certain telecommunications transport services to various companies who provide alarm monitoring services to the public. SWBT agrees with U S West that it should be allowed to continue providing these transport services to such companies. SWBT does not believe, however, that merely because U S West provided a telecommunications transport service utilized by alarm monitoring providers prior to November, 1995, it may “engage in the provision of” the full panoply of alarm monitoring services contemplated by Section 275..

eliminate a provider. The truth is to the contrary. The sales agency arrangement that would be allowed by approval of SWBT's CEI Plan would be competitively neutral -- no provider would be eliminated.<sup>71</sup>

For these reasons, the Commission should conclude that the activities envisioned by SWBT's CEI Plan, whether undertaken individually or collectively, do not constitute the "provision" of alarm monitoring services.

#### IV. TELEMESSAGING - SECTION 260

##### A. The Statutory Nondiscrimination Obligations Applicable to BOCs Are Limited to Those Stated Within Section 260(a). (NPRM, para. 77)

The non-accounting safeguard of Section 260(a)(2) is simply stated and straightforward: the LEC may not "prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services." Attempts by at least two commentators to significantly expand the LECs' nondiscrimination obligation must be rejected.

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<sup>71</sup> To this extent, SWBT's request for approval of its CEI Plan stands in direct contrast to Ameritech's unilaterally undertaken acquisition of the alarm monitoring assets of Circuit City. While the former is competitively neutral, the latter is not -- Ameritech's acquisition results in the immediate elimination of a direct competitor. In determining to prohibit grandfathered companies such as Ameritech from "acquir[ing] any equity interest in, or obtain[ing] financial control of" any alarm monitoring company, Section 275(a)(2), Congress clearly intended to preclude the complete and total diversion of assets from one alarm company to another owned by a BOC, and the consequent elimination of a competitor, that such change in control would necessarily create. If "financial control" did not encompass acquisition of an entire customer account base, there would have been no occasion for Congress to have also expressly permitted the more limited "exchange of customers." Moreover, if the FCC were to rule acquisition of an entire account base permissible, the effect would be to render the "exchange of customers" clause meaningless. National Insulation Transportation Commission v. ICC, 683 F.2d 533, 537 (D.C. Cir. 1982) ("court must, if possible, give effect to every phrase of a statute").

Voice-Tel and AT&T broadly argue that Section 260 prohibits “any discrimination,”<sup>72</sup> such that, for example, a LEC should not be permitted to market or advertise telemessaging services unless it agrees to likewise market and advertise the telemessaging services of its competitors.<sup>73</sup> However, both overstate the requirements of the statute, which are directed exclusively to discrimination in provision of telecommunications services. Sales, advertising and other marketing-related activities do not qualify. Section 153(46). LECs have never been required to provide marketing support for enhanced services providers and there is no record support by which to reasonably conclude otherwise.

Nor should the Commission seek to impose any requirement that telemessaging be offered only through a separate subsidiary, as suggested by Voice-Tel.<sup>74</sup> It is sufficient that where Congress sought to impose a separate affiliate requirement, it chose to do so.<sup>75</sup> Section 260 does not so provide, thus reflecting Congress’ intent not to impose structural separation requirements within Section 260. Congress’ silence in this regard may be likened to the lack of a separate affiliate requirement in Section 653, pertaining to video service. The Commission recently regarded this omission as important, and declined to impose a separate affiliate requirement in connection with

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<sup>72</sup> AT&T, at 7-8; Voice-Tel, at 6.

<sup>73</sup> Voice-Tel, at 10-11.

<sup>74</sup> Voice-Tel, at 12.

<sup>75</sup> See, Section 272(a)(2).

Section 653.<sup>76</sup> The Commission should interpret Section 260 no differently, and should not impose a separate affiliate requirement.

Finally, Voice-Tel's attempt to impose mandatory collocation requirements on LECs<sup>77</sup> must be rejected. The Commission ruled over ten years ago, and reaffirmed just last month, that LECs need not collocate or integrate the facilities of competing enhanced services providers with the LEC's basic network facilities.<sup>78</sup> Voice-Tel provides no legal reason sufficient for the Commission to depart from these rulings.

**B. Telemessaging Is An InterLATA Information Service Only Where it Includes an Integrated InterLATA Transmission Component Between the End User and the BOC. (NPRM, para. 75)**

The Commission's NPRM refers to its tentative conclusion reached in its BOC In-region NPRM that telemessaging is an information service, the provision of which on an interLATA basis would be subject to the requirements of Section 272 in addition to those of Section 260.<sup>79</sup> For purposes of the instant proceeding, it is important that the Commission recognize certain principles

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<sup>76</sup> In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996: Open Video System, CS Docket No. 96-46, FCC 96-249, Second Report and Order, released June 3, 1996, at para. 249. In addition, a separate affiliate requirement would be particularly inappropriate given the robustly competitive voice messaging industry developed as a result of structural integration freedoms. Computer III Further Remand Proceedings: BOC Provision of Enhanced Services, CC Docket No. 95-20, SWBT ex parte letter to William F. Caton, June 21, 1996, at 3-4, Attachments A & B.

<sup>77</sup> Voice-Tel, at 5.

<sup>78</sup> Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 FCC 2d 958 (1986), at para. 164. (further history omitted); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, First Report and Order, released August 8, 1996, para. 581..

<sup>79</sup> NPRM, at para. 75, citing BOC In-region NPRM, at para. 54.

advanced by U S WEST.<sup>80</sup> The Commission should conclude that voice messaging becomes an intraLATA information service only to the extent that a BOC offers both the information service and the intraLATA transmission component as an integrated single service.

As U S WEST points out, information services generally consist of an enhanced or information service functionality, as well as an underlying transmission component between the service provider and the end user. Where an information service is offered without an integrated interLATA transmission component, the service remains fundamentally intraLATA, even if the service might also be accessible to the end user from another LATA. In such a case, the end user alone makes the decision to access the service from another LATA, chooses the interexchange carrier to provide such interLATA transport, and separately pays for the transport. The BOC-provided service would be limited to an intraLATA information service.

Accordingly, the Commission should conclude that access to local voice messaging service by means of interexchange carrier transport does not constitute a BOC's provision of an intraLATA information service.

#### **IV. CONCLUSION**

SBC again urges the Commission not to adopt rules in this proceeding, particularly rules that would "supplement" the statutory schemes carefully crafted by Congress or would burden the telecommunications industry unnecessarily. If the Commission must adopt rules, then it should stay as true as possible to the statutory language chosen by Congress, and reaffirm its commitment to the efficiencies and customer-convenience of "one-stop shopping" in accordance with SBC's comments.

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<sup>80</sup> U S WEST, at 31-33.

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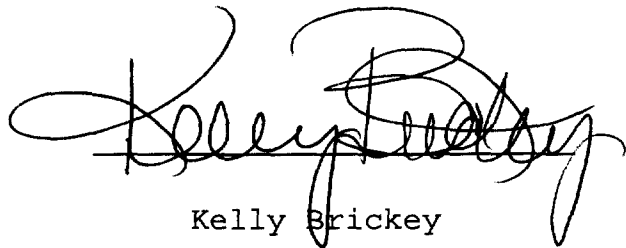
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CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Reply Comments of SBC Communications Inc.", have been served September 20, 1996 to the Parties of Record.



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